IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

CRL.A.No. 1444 of 2005()

CC.20/1992 of ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOZHIKODE

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APPELLANT: COMPLAINANT.

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, (CRIME NO. 5/HQ/85VIG. HQ.TVM).

BY PUBLIC PROSECUTOR SRI. P. RAVINDRA BABU

RESPONDENTS: ACCUSED.

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1. P.V.KRISHNAN, FORMER EXECUTIVE ENGINEER, CHITTURPPUZHA PROJECT DIVISION, CHITTUR(KUMAR VILLA, BELL HEAVEN GARDENS, KAWDIAR, THIRUVNANTHAPURAM).

2. S.KRISHNA IYER, FORMER SUPERINTENDING ENGINEER, SIRUVANI PROJECT CIRCLE, PALAKKAD (SABARIGIRI, VINAYAKA NAGAR, THAREKKAD, PALAKKAD) (DEAD).

3. V.D.UDAYAKUMAR, MANAGING PARTNER, M/S.INDIRA ENGG.CORPORATION & M/S.DEEPA AGENCIES, COIMBATORE 5/18(VEERAKERALAM, COIMBATORE).

BY ADV. SRI.T.G.RAJENDRAN-R1AND R3

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/03/2005 ALONG WITH CRL.APPEAL NO.1486 OF 2005 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NOS. 1444, 1486, 1488, 1624, 1625, 1626, 1627, 1882 & 2094 OF 2005

Dated this the 27th day of March, 2007

JUDGMENT

The common questions involved in these appeals are (i) whether the court below was justified in acquitting the accused in the Calendar Cases against which the appeals are filed and (ii) whether the sanction order given by the Secretary, Vigilance Department to prosecute the accused in the above cases under Section 6 of the Prevention of Corruption Act, 1947 (hereinafter referred to as "the Act") is legally correct or not.

2. The acquittal orders passed in the Calendar Cases were on the basis of the finding entered by the Enquiry Commissioner and Special Judge, Kozhikde to the effect that the Secretary, Vigilance Department was not competent to issue the sanction order to prosecute the accused in the above cases. The grounds urged in the appeals are (i) the impugned orders are not sustainable on the ground that the trial Judge has no power to acquit the accused in view of the defective sanction granted by an

incompetent officer and (ii) the trial Judge went wrong in proceeding with the case as the court below had already found that the sanction order was irregular.

3. The brief facts which led to the filing of the final charge against the accused are that while the accused were working as public servants in various capacities, they committed misconducts punishable under Section 5(1)(d) read with Section 5(2) of the Act and Sections 109 and 120 B I.P.C. Since the sanction orders produced by the prosecution were granted by the Secretary, Vigilance Department of the State, the court below acquitted the accused. Section 6 of the Act reads as follows:

> "6. **Previous sanction necessary for prosecution.--** (1) No court shall take cognizance of an offence punishable under section 161 (or section 164 or section 165 of the Indian Penal Code or under sub-section (2) (or sub-section (3-A) of section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction -
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> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;
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> (b) in the case of person who is employed in connection with the affairs of (a State) and is

> not removable from his office save by or with the sanction of the State Government, of the State Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office."

A reading of the above provision would clearly indicate that unless sanction is obtained from a competent authority for prosecuting a public servant, no court shall take cognizance of the offence punishable under the provisions of the Act. The section also mentions the authority competent to give sanction depending upon the employment or the post held by the accused in the Central Government, State Government or any other institution.

4. The learned Public Prosecutor submits that the court below committed serious error in acquitting the accused only on the ground of defective sanction orders produced by the prosecution. He further submits that the proper method which the court below ought to have adopted was to drop the proceedings and allow the prosecution to produce proper sanction orders and then continue the proceedings against the accused. To substantiate his contention, the learned Public Prosecutor relied on the decision of the Apex Court reported in **State of Goa v. Babu**

Thomas (2005)8 S.C.C.130. In the above judgment, the Apex Court held that taking cognizance of an offence by the court without proper sanction under the provisions of the Act is a fundamental error which invalidates the cognizance as without jurisdiction. The Apex Court in the above case permitted the competent authority to issue a fresh sanction order considering the gravity of the allegations levelled against the accused in the said case. The learned Public Prosecutor also placed reliance on another judgment of the Apex Court reported in **State through Central Bureau of Investigation v. B.L. Verma (1977)10 S.C.C.772**. Though the sanction in the above case was one coming under Section 197 Cr.P.C., the Apex Court had taken the view that the court should have dropped the proceedings. The Apex Court also clarified that the order would not come in the way of the competent authority giving sanction under Section 197 Cr.P.C. and the court taking cognizance of the offence after getting proper sanction. In the light of the above principles laid down by the Apex Court, this Court is of the view that the acquittal orders passed by the court below have to be set aside.

5. Now, coming to the second point regarding the competency of the authority to give sanction, learned Public Prosecutor invited the attention of this Court to the decision of a Division Bench of this Court

reported in **Krishna Iyer v. State of Kerala, 2005(1) K.L.T. 391**. In the above judgment, this Court had taken the view that as per the provisions of the Rules of Business, every order passed by the Secretary shall be considered as having been passed by the Government and every Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or such other officer is competent to give sanction to prosecute an accused as per Section 6 of the Act. But, the Division Bench had not categorically held that prior to 23.4.1994, the Secretary, Vigilance Department was competent to give sanction to prosecute a public servant. Attention of this Court was invited to the decisions of the Apex Court reported in **Mohandas v. State of Kerala, 2002(2) K.L.T. 251 (SC)** and **K. Devassia v. State of Kerala (2006) 3 S.C.C. (Cri.) 577**. In the above two judgments, the Apex Court observed that prior to 23.4.1994, the Secretary, Vigilance Department was not competent to give sanction to prosecute an accused under the provisions of the Act. The above observation was made in view of the fact that on 23.4.1994, Rule 4 of the Rules of Business was amended as follows:

> " "4. The business of the Government shall be transacted in the Department specified in the First Schedule, and shall be classified and distributed between those departments as laid down therein."

> First Schedule, regarding distribution of the business among departments of the Secretariat, item XXXII is "Vigilance Department". Sub item (1) reads as follows:
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> "XXXII VIGILANCE DEPARTMENT
>
> 1. All cases of corruption including cases of complaints or allegations against public servants."
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> A notification was published on 23rd April, 1994 amending the Rules of Business of the Government of Kerala in Part II, First Schedule. Following item under the heading "XXXII Vigilance Department" was added as item No.8:
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> "8. Issuance of orders sanctioning prosecution of a public servant under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or and the Prevention of Corruption Act, 1988 (Central Act 49 of 1988) placing him under suspension and finalising the disciplinary proceedings against him under the relevant rules and orders in pursuance of a vigilance enquiry contemplated/initiated against the public servant."

In the light of the above amendment brought to the Rules of Business, the Secretary, Vigilance Department is competent to give sanction to prosecute a public servant under the provisions of the Act as authorized by the Government or the Governor only after 23.4.1994. If that be so, the finding entered by the court below that the sanction orders produced by the

prosecution were irregular is to be upheld.

6. In the light of the above discussion, this Court is of the view that the court below ought not to have acquitted the accused . It is a fact that once a charge is framed against an accused, the trial court should either convict or acquit the accused. But as this Court has already found that taking cognizance of offence by the court below without proper sanction itself is abinitio void, the acquittal orders passed by the court below are liable to be set aside.

The Crl. Appeals are allowed in part by setting aside the acquittal of the accused and declaring that all the proceedings taken by the court below in the Calendar Cases from which the above appeals arose shall stand dropped without prejudice to the right of the prosecution to proceed as per law.

(K.THANKAPPAN, JUDGE)

sp/

C.R.

K.THANKAPPAN, J.

CRL.APPEAL NOS.1444, 1486, 1488, 1624, 1625,1626, 1627,1882 & 2094 0F 2005

JUDGMENTs

27TH MARCH, 2007